

HOUSE BILL 831

M4

11r1052

By: **Delegates S. Robinson, Arora, Barkley, Braveboy, Carr, Clippinger, Cullison, Frick, Gilchrist, Holmes, Hucker, A. Kelly, Luedtke, A. Miller, Niemann, Reznik, B. Robinson, Wilson, and Zucker**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Invasive Plants – Prevention and Control**

3 FOR the purpose of establishing the Invasive Plants Advisory Committee in the
4 Department of Agriculture; providing for the membership and charge of the
5 Committee; providing for the terms of the members; requiring the Committee to
6 elect a chair, a vice chair, and a secretary of the Committee; requiring the
7 Department to provide staff for the Committee; prohibiting a member from
8 receiving certain compensation, but authorizing a member to receive certain
9 reimbursement; requiring the Secretary of Agriculture to adopt certain
10 regulations by a certain date; prohibiting certain activities involving certain
11 invasive plants under certain circumstances; requiring a person to receive
12 certain approval from the Secretary before engaging in certain activities
13 involving certain invasive plants; requiring the Secretary to take certain action
14 upon finding certain invasive plants; requiring a person to dispose of certain
15 invasive plants in a certain manner; requiring the Secretary to take certain
16 action if certain invasive plants are not disposed of properly; requiring the
17 State’s Attorney to institute certain proceedings for certain purposes; requiring
18 the Secretary to issue stop sale orders of certain invasive plants under certain
19 circumstances; authorizing the Secretary to bring an action for injunction under
20 certain circumstances; establishing certain penalties for certain violations
21 under this Act; defining certain terms; and generally relating to the prevention
22 and control of invasive plants.

23 BY adding to

24 Article – Agriculture

25 Section 9.5–101 through 9.5–306 to be under the new title “Title 9.5. Invasive
26 Plants Prevention and Control”

27 Annotated Code of Maryland

28 (2007 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Preamble

2 WHEREAS, Certain invasive plants that have been introduced into the State
3 are affecting the health and ecological functioning of plant and animal communities in
4 natural areas such as wildlands, parks, forests, lakes and rivers, and managed areas
5 such as farms and backyards; and

6 WHEREAS, Invasive plants can cause ecological damage in numerous ways,
7 including outcompeting native species for resources, reducing biological diversity,
8 disrupting food webs, degrading food and shelter for native animals, altering flooding
9 and fire impacts, and modifying nutrient cycling; and

10 WHEREAS, Some invasive plants have major economic consequences, including
11 reducing, degrading, or relocating valuable species, compromising farm production and
12 food security, and increasing costs of control or management on public and private
13 lands; and

14 WHEREAS, Certain invasive plants that contain toxins and allergens may
15 cause a negative impact to human health; and

16 WHEREAS, Many plants that are invasive to the State and elsewhere in the
17 Mid-Atlantic region were introduced through ornamental horticultural commerce
18 before their invasive habits were realized; and

19 WHEREAS, Other invasive plants have been inadvertently introduced through
20 regular commercial shipping activities; and

21 WHEREAS, Reducing the potential for invasive plants to negatively affect
22 native species and their function is beneficial to the citizens of the State; now,
23 therefore,

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Agriculture**27 **TITLE 9.5. INVASIVE PLANTS PREVENTION AND CONTROL.**28 **SUBTITLE 1. DEFINITIONS.**29 **9.5–101.**

30 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
31 **INDICATED.**

1 **(B) “COMMITTEE” MEANS THE INVASIVE PLANTS ADVISORY**
2 **COMMITTEE.**

3 **(C) “INVASIVE PLANT” MEANS A TERRESTRIAL PLANT SPECIES THAT:**

4 **(1) DID NOT EVOLVE IN THE STATE; AND**

5 **(2) IF INTRODUCED WITHIN THE STATE, WILL CAUSE OR IS**
6 **LIKELY TO CAUSE, AS DETERMINED BY THE SECRETARY:**

7 **(I) ECONOMIC HARM;**

8 **(II) ECOLOGICAL HARM;**

9 **(III) ENVIRONMENTAL HARM; OR**

10 **(IV) HARM TO HUMAN HEALTH.**

11 **(D) “LANDSCAPING SERVICES” INCLUDES SERVICES FOR ORNAMENTAL**
12 **HORTICULTURAL DESIGN, MAINTENANCE, AND INSTALLATION OF LIVING**
13 **PLANTS.**

14 **(E) “TIER 1 INVASIVE PLANT” INCLUDES INVASIVE PLANT SPECIES**
15 **THAT CAUSE OR ARE LIKELY TO CAUSE SEVERE HARM WITHIN THE STATE.**

16 **(F) “TIER 2 INVASIVE PLANT” INCLUDES INVASIVE PLANT SPECIES**
17 **THAT CAUSE OR ARE LIKELY TO CAUSE SUBSTANTIAL NEGATIVE IMPACT WITHIN**
18 **THE STATE.**

19 **SUBTITLE 2. INVASIVE PLANTS ADVISORY COMMITTEE.**

20 **9.5–201.**

21 **THERE IS AN INVASIVE PLANTS ADVISORY COMMITTEE IN THE**
22 **DEPARTMENT.**

23 **9.5–202.**

24 **(A) THE COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:**

25 **(1) AS EX OFFICIO MEMBERS:**

26 **(I) THE SECRETARY, OR THE SECRETARY’S DESIGNEE;**

1 **(II) THE SECRETARY OF NATURAL RESOURCES, OR THE**
2 **SECRETARY'S DESIGNEE;**

3 **(III) THE SECRETARY OF TRANSPORTATION, OR THE**
4 **SECRETARY'S DESIGNEE;**

5 **(IV) THE SECRETARY OF THE ENVIRONMENT, OR THE**
6 **SECRETARY'S DESIGNEE; AND**

7 **(V) THE DEAN OF THE COLLEGE OF AGRICULTURE AND**
8 **NATURAL RESOURCES AT THE UNIVERSITY OF MARYLAND, COLLEGE PARK, OR**
9 **THE DEAN'S DESIGNEE; AND**

10 **(2) APPOINTED BY THE SECRETARY:**

11 **(I) IN CONSULTATION WITH THE SECRETARY OF NATURAL**
12 **RESOURCES:**

13 **1. ONE INDIVIDUAL FROM A LANDSCAPING**
14 **INDUSTRY THAT IS REGULATED BY THE DEPARTMENT;**

15 **2. ONE INDIVIDUAL FROM A PLANT WHOLESALE**
16 **INDUSTRY OR A PLANT RETAIL INDUSTRY THAT IS REGULATED BY THE**
17 **DEPARTMENT; AND**

18 **3. ONE INDIVIDUAL FROM A NONGOVERNMENTAL**
19 **ENVIRONMENTAL ADVOCACY ORGANIZATION;**

20 **(II) TWO INDIVIDUALS WITH EXPERIENCE WITH INVASIVE**
21 **PLANTS, AGRICULTURE, HORTICULTURE, GARDENING, CONSERVATION, OR**
22 **OTHER RELEVANT EXPERIENCE; AND**

23 **(III) ONE CONSUMER MEMBER.**

24 **(B) (1) THE TERM OF AN APPOINTED MEMBER IS 3 YEARS AND**
25 **BEGINS ON JANUARY 1.**

26 **(2) AN APPOINTED MEMBER MAY NOT SERVE MORE THAN TWO**
27 **CONSECUTIVE TERMS.**

28 **(C) AN APPOINTED MEMBER SHALL SERVE AT THE PLEASURE OF THE**
29 **SECRETARY.**

30 **9.5-203.**

1 FROM AMONG ITS MEMBERS THE COMMITTEE SHALL ELECT ANNUALLY A
2 CHAIR, A VICE CHAIR, AND A SECRETARY.

3 **9.5-204.**

4 (A) (1) UNTIL THE SECRETARY ADOPTS REGULATIONS IN
5 ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET
6 AT LEAST QUARTERLY.

7 (2) AFTER THE SECRETARY HAS ADOPTED REGULATIONS IN
8 ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET
9 AS NEEDED.

10 (B) A MEMBER OF THE COMMITTEE:

11 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE
12 COMMITTEE; BUT

13 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
14 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE
15 BUDGET.

16 (C) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE COMMITTEE.

17 **9.5-205.**

18 THE COMMITTEE SHALL:

19 (1) ADVISE THE SECRETARY REGARDING REGULATIONS
20 NECESSARY TO CARRY OUT THE PROVISIONS OF THIS TITLE; AND

21 (2) (I) CONDUCT AN ANNUAL REVIEW OF THE RISK
22 ASSESSMENT PROTOCOL ADOPTED UNDER § 9.5-301 OF THIS TITLE; AND

23 (II) REPORT TO THE SECRETARY REGARDING ANY
24 PROPOSED CHANGES TO THE RISK ASSESSMENT PROTOCOL.

25 **SUBTITLE 3. REGULATION OF INVASIVE PLANTS.**

26 **9.5-301.**

27 (A) THE SECRETARY, WITH THE ADVICE OF THE COMMITTEE, SHALL:

1 **(1) ON OR BEFORE OCTOBER 1, 2012, ADOPT REGULATIONS**
2 **THAT:**

3 **(I) ESTABLISH A SCIENCE-BASED RISK ASSESSMENT**
4 **PROTOCOL FOR INVASIVE PLANTS THAT:**

5 **1. WILL SERVE AS A BASIS FOR CREATING A**
6 **TWO-TIERED REGULATORY APPROACH FOR CONTROLLING INVASIVE PLANTS IN**
7 **THE STATE; AND**

8 **2. CONSIDERS THE HARM, AS DETERMINED BY THE**
9 **SECRETARY, THAT INVASIVE PLANTS CAUSE IN THE STATE, INCLUDING:**

10 **A. ECONOMIC HARM;**

11 **B. ECOLOGICAL HARM;**

12 **C. ENVIRONMENTAL HARM; AND**

13 **D. HARM TO HUMAN HEALTH;**

14 **(II) GOVERN ADMINISTRATIVE ORDERS THAT THE**
15 **SECRETARY MAY ISSUE TO ENFORCE THIS SUBTITLE; AND**

16 **(III) ESTABLISH A PROCEDURE FOR THE APPROVAL**
17 **REQUIRED UNDER § 9.5-302 OF THIS SUBTITLE FOR ACTIVITIES INVOLVING**
18 **TIER 1 INVASIVE PLANTS.**

19 **(2) ON OR BEFORE OCTOBER 1, 2013, ADOPT REGULATIONS**
20 **THAT:**

21 **(I) ESTABLISH A LIST OF TIER 1 PLANTS AND TIER 2**
22 **PLANTS IN ACCORDANCE WITH THE RISK ASSESSMENT PROTOCOL ADOPTED**
23 **UNDER PARAGRAPH (1) OF THIS SUBSECTION;**

24 **(II) ESTABLISH A PROCEDURE FOR CLASSIFICATION OR**
25 **DECLASSIFICATION OF AN INVASIVE PLANT AS A TIER 1 INVASIVE PLANT OR A**
26 **TIER 2 INVASIVE PLANT;**

27 **(III) PHASE IN THE IMPLEMENTATION OF THE**
28 **REQUIREMENTS OF THIS SUBTITLE WITH CONSIDERATION OF THE ECONOMIC**
29 **IMPACT OF THESE REQUIREMENTS ON NURSERIES, LANDSCAPERS, PLANT**
30 **WHOLESALERS, PLANT RETAILERS, AND ANY OTHER INDUSTRY;**

1 (IV) ESTABLISH A PROCEDURE FOR THE DISPOSAL OF TIER 1
2 PLANTS;

3 (V) DESIGNATE THE FORMAT, SIZE, AND CONTENT OF THE
4 SIGN REQUIRED UNDER § 9.5-302(B)(1) OF THIS SUBTITLE; AND

5 (VI) PROVIDE FOR THE DISTRIBUTION OF A LIST OF TIER 2
6 INVASIVE PLANTS TO LICENSED NURSERIES, PLANT DEALERS, AND PLANT
7 BROKERS ON AN ANNUAL BASIS.

8 **9.5-302.**

9 (A) (1) THIS SUBSECTION DOES NOT APPLY TO THE TRANSFER,
10 LEASE, SALE, OR PURCHASE OF REAL PROPERTY ON WHICH AN INVASIVE PLANT
11 IS LOCATED.

12 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
13 SUBSECTION AND IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
14 SECRETARY, A PERSON MAY NOT PROPAGATE, IMPORT, TRANSFER, SELL,
15 PURCHASE, TRANSPORT, OR INTRODUCE ANY LIVING PART OF A TIER 1
16 INVASIVE PLANT IN THE STATE.

17 (3) WITH RESPECT TO A TIER 1 INVASIVE PLANT, A PERSON
18 SHALL RECEIVE APPROVAL FROM THE SECRETARY BEFORE:

19 (I) DISPOSING OF THE INVASIVE PLANT;

20 (II) CONTROLLING THE INVASIVE PLANT;

21 (III) USING THE INVASIVE PLANT FOR RESEARCH OR
22 EDUCATIONAL PURPOSES; OR

23 (IV) EXPORTING THE INVASIVE PLANT OUT OF THE STATE.

24 (B) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
25 SECRETARY, A PERSON MAY NOT:

26 (1) SELL OR OFFER FOR SALE AT A RETAIL OUTLET A TIER 2
27 INVASIVE PLANT UNLESS THE RETAIL OUTLET POSTS IN A CONSPICUOUS
28 MANNER IN PROXIMITY TO ALL TIER 2 PLANT DISPLAYS, A SIGN IDENTIFYING
29 THE PLANTS AS TIER 2 PLANTS; OR

1 **(2) PROVIDE LANDSCAPING SERVICES TO PLANT OR SUPPLY FOR**
2 **PLANTING A TIER 2 INVASIVE PLANT UNLESS THE PERSON PROVIDES TO ITS**
3 **CUSTOMER A LIST OF TIER 2 INVASIVE PLANTS.**

4 **9.5-303.**

5 **(A) ON FINDING A TIER 1 PLANT, THE SECRETARY SHALL:**

6 **(1) ISSUE A WRITTEN CONDEMNATION SEIZURE ORDER;**

7 **(2) MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER; AND**

8 **(3) PROVIDE WRITTEN NOTICE TO THE OWNER, TENANT, OR**
9 **PERSON IN CHARGE OF THE PREMISES.**

10 **(B) (1) ON NOTICE FROM THE SECRETARY, A PERSON SHALL DISPOSE**
11 **OF A TIER 1 PLANT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE**
12 **SECRETARY.**

13 **(2) IF A TIER 1 PLANT IS NOT DISPOSED OF IN ACCORDANCE WITH**
14 **PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL:**

15 **(I) DESTROY THE PLANT;**

16 **(II) PREPARE A STATEMENT OF FACTS AND A STATEMENT**
17 **OF THE EXPENSE OF DESTRUCTION; AND**

18 **(III) PROVIDE COPIES OF THE STATEMENTS TO THE STATE'S**
19 **ATTORNEY OF THE COUNTY IN WHICH THE OWNER OF THE PROPERTY RESIDES.**

20 **(C) (1) THE STATE'S ATTORNEY SHALL INSTITUTE THE**
21 **APPROPRIATE PROCEEDING TO COLLECT THE EXPENSES DUE TO THE**
22 **SECRETARY.**

23 **(2) A COPY OF THE STATEMENTS PREPARED UNDER SUBSECTION**
24 **(B)(2) OF THIS SECTION IS SUFFICIENT EVIDENCE TO PROVE A CLAIM UNDER**
25 **THIS SUBSECTION.**

26 **9.5-304.**

27 **(A) IF THE SECRETARY FINDS THAT A TIER 2 PLANT DOES NOT MEET**
28 **THE SIGNAGE REQUIREMENT UNDER § 9.5-302(B)(1) OF THIS SUBTITLE, THE**
29 **SECRETARY SHALL:**

1 (1) **ISSUE A STOP SALE ORDER; AND**

2 (2) **MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER.**

3 **(B) THE SECRETARY SHALL GIVE WRITTEN NOTICE OF A FINDING MADE**
4 **UNDER SUBSECTION (A) OF THIS SECTION TO THE OWNER, TENANT, OR PERSON**
5 **IN CHARGE OF THE PREMISES.**

6 **(C) A STOP SALE ORDER ISSUED UNDER THIS SECTION SHALL REMAIN**
7 **IN EFFECT UNTIL THE REQUIRED SIGNAGE IS POSTED.**

8 **9.5-305.**

9 **(A) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION**
10 **AGAINST A PERSON TO:**

11 (1) **ENFORCE THIS SUBTITLE;**

12 (2) **ENFORCE AN ORDER OF THE SECRETARY UNDER THIS**
13 **SUBTITLE; OR**

14 (3) **PREVENT OR RESTRAIN A VIOLATION OF THIS SUBTITLE.**

15 **(B) IN AN ACTION FOR AN INJUNCTION BROUGHT UNDER THIS SECTION,**
16 **THE SECRETARY DOES NOT HAVE TO ALLEGE OR PROVE THAT:**

17 (1) **AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR**

18 (2) **SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT**
19 **FROM THE CONTINUED VIOLATIONS.**

20 **(C) AN INJUNCTION INSTITUTED UNDER THIS SECTION SHALL BE**
21 **ISSUED WITHOUT BOND.**

22 **9.5-306.**

23 **(A) A PERSON THAT VIOLATES THIS SUBTITLE IS SUBJECT TO THE**
24 **PENALTIES AND FINES SET FORTH IN TITLE 12 OF THIS ARTICLE.**

25 **(B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTY**
26 **AUTHORIZED UNDER THIS ARTICLE, THE SECRETARY MAY IMPOSE A CIVIL**
27 **PENALTY NOT EXCEEDING \$500 FOR EACH VIOLATION ON A PERSON THAT**
28 **VIOLATES:**

- 1 **(I) THIS SUBTITLE; OR**
- 2 **(II) ANY ORDER ISSUED BY THE SECRETARY UNDER THIS**
3 **SUBTITLE.**
- 4 **(2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS**
5 **SUBSECTION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.**
- 6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2011.